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Notice of Allowability

Application No.

10/628,068

Examiner

Eric F. Winakur

Applicant(s)

CHEN ET AL.

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to _____.
2. ☒ The allowed claim(s) is/are 1-30 and 34-53.
3. ☒ The drawings filed on 24 July 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>7/24; 1/22; 1/21</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

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1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Richard Getz on 12 July 2005. Applicant agreed to amend the specification and claims to correct format, antecedent, and grammatical problems.

The application has been amended as follows:

In the specification:

Specification, page 8, paragraph [0022], line 8, "and 3)" was changed to -- 3) --;

line 11, "4)" was changed to -- and 4) --.

Specification, page 10, paragraph [0033], line 2, "of" was deleted;

line 4, "of" was deleted.

In the claims:

In claim 2, line 1, -- the -- was inserted before "equation".

In claim 14, line 1, -- the -- was inserted before "equation".

In claim 30, line 1, -- the -- was inserted before "equation".

Claims 31 - 33 were canceled.

In claim 34, line 1, "33" was changed to -- 27 --.

In claim 40, line 6, "the three" was changed to -- three --.

In claim 43, line 1, -- the -- was inserted before "equation".

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2. The following is an examiner's statement of reasons for allowance: Applicant cites several references related to optical measurement methods for determining blood oxygen saturation. In addition, Hirao et al. teach an optical measurement method that analyzes measurements of three wavelengths of light to determine oxygen saturation values (see column 6, line 56 - column 8, line 53) and includes optical path length correction based upon Kubelka-Monk theory. None of the prior art teaches a method for non-invasively determining a blood oxygen saturation level using a near infrared spectrophotometry sensor or calibrating such a sensor that includes either: calibrating the sensor using empirical data that relates to the subject's tissue that is sensed by the sensor to account for light signal attenuation resulting from light scattering within the subject's tissue; or determining a first calibration constant and a second calibration constant using empirical data developed from the subject at or about the same time as when the sensing occurs, in combination with the other claimed steps. Further, the prior art does not teach or suggest a method for calibrating a NIRS sensor that includes adjusting a second attenuation of light signals from an uncalibrated NIRS sensor so that they substantially agree with a first attenuation of light signals from a calibrated NIRS sensor, in combination with the other claimed steps.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571/272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eric F Winakur
Primary Examiner
Art Unit 3736

13 July 2005